



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

SUPREME COURT OF APPEALS OF VIRGINIA.

RICHMOND.

TAYLOR AND OTHERS V. NETHERWOOD AND OTHERS.

January 31, 1895.*

1. **MECHANICS' LIEN**—*Description of property.* The object of requiring a description is to inform the owner upon which of his property the lien is claimed, and to give notice thereof to purchasers and creditors, so that they may identify the property and protect themselves against the lien. If the property can be reasonably identified by the description given, it is all that the law requires. Code, sec. 2478.
2. **MECHANICS' LIEN**—*Sufficiency of account—Extra work.* Where the work is contracted for as an entirety for a specific amount, and this is so set out in the account filed, all the information is given that is needed, or can reasonably be required. If extra work is done, it is sufficient to set out each item of the extra work and the price thereof. *Shackleford v. Beck*, 80 Va. 573, distinguished.
3. **MECHANICS' LIEN**—*Verification of account.* No particular form of verification is prescribed, and the certificate of a notary at the foot of the account filed that the contractor personally appeared before him, in his county or city, and made oath to the correctness of the account, is a sufficient verification under the statute.
4. **MECHANICS' LIEN**—*Notice to owner of property.* Where the account is sufficient, and a copy thereof, together with a statement of the intention to claim the lien, is served on the owner within the time prescribed by the statute, this is a sufficient notice to the owner, under sec. 2477 of the Code.
5. **MECHANICS' LIEN**—*Personal decree against owner and general contractor.* Although the bill was filed to enforce the lien of a subcontractor against real estate of the owner, yet if the account is established and the owner admits funds in hand sufficient to pay it, and his readiness to pay, it would be a vain and useless act to subject the property to the payment of the lien, and it is not error to give a personal decree against the owner and general contractor for the amount due.

Appeal from a decree of the Chancery Court of the City of Richmond, rendered July 3, 1893. *Affirmed.*

Opinion states the case.

James M. Gregory, for appellants.

D. C. Richardson, for appellees.

* Reported by M. P. Burks, State Reporter.

RIELY, J., delivered the opinion of the court.

This case involves the validity of the lien of a subcontractor filed under the mechanics' lien law. In the month of April, 1890, John F. Bell entered into a contract with Wirt E. Taylor to build for the latter a dwelling house of stone and brick in the city of Richmond. Bell, who was a carpenter, employed James Netherwood to do the stone-work and furnish the necessary materials for the fixed sum of \$2,350. Netherwood furnished the materials and executed the work as required by the plan and specifications, and to the satisfaction of the architect, the general contractor and the owner. There was no complaint of the manner of its execution. It was only of the delay in doing the work. While the work was being done Netherwood received from Bell the sum of \$1,175, and when he had completed his part of the work he applied to Bell for the balance due to him under his contract, and also the amount due for some extra work, amounting in all to \$1,220.42. Bell refused payment, because of the loss he alleged that he had sustained by the delay of Netherwood in executing his work. Netherwood thereupon, on the 9th day of June, 1891, and within thirty days after the completion of his work, filed in the Clerk's office of the Chancery Court of the said city his mechanics' lien on the said dwelling-house for \$1,220.42, with interest thereon from the 22d of May, 1891, and on the same day gave notice thereof to Taylor. On the 7th day of October, 1891, Netherwood instituted suit in the said Chancery Court against John F. Bell, Wirt E. Taylor, the wife of Taylor, and Charles A. Rose, trustee in a deed of trust made by Taylor and wife on the 11th day of June, 1891, to enforce the said lien. John F. Bell and Wirt E. Taylor separately demurred to and answered the bill. The Court overruled the demurrer; and, the cause coming on to be heard on the 3d day of July, 1893, on the bill and answers, the exhibits and the testimony, and it appearing that Taylor owed Bell, when Netherwood gave Taylor notice of having filed his mechanics' lien, the sum of \$1,400—a sum more than sufficient to pay the claim of Netherwood—the Court held that Netherwood had acquired a valid lien on the said house and lot of land for the sum of \$1,220.42, with interest thereon from the 22d day of May, 1891, and decreed that Wirt E. Taylor and John F. Bell pay to James Netherwood the said sum of money and the costs of the suit. From this decree and the decree overruling the demurrer the appeal in this case was taken.

The demurrer and answers assailed the validity of the mechanics' lien on four several grounds: First, because it did not sufficiently describe the property; second, because the statement of the account was not as full as the law required; third, because the verification of the account was insufficient; and, fourth, because the notice given to the owner was defective. Section 2475 of the Code declares what persons shall have a lien on any building or structure, and so much land therewith as shall be necessary for the convenient use and enjoyment of the premises, for performing labor about or furnishing materials for the construction, repair, or improvement of such building or structure. By section 2476 it is provided that a general contractor, in order to perfect such lien, shall, where the building or structure is within the corporate limits of the city of Richmond, file in the Clerk's office of the Chancery Court of the said city "an account showing the amount and character of the work done or the materials furnished, the prices charged therefor, the payments made, if any, and the balance due, verified by the oath of the claimant or his agent, with a statement attached declaring his intention to claim the benefit of said lien, and giving a brief description of the property on which he claims a lien." And by section 2477 a subcontractor, in order to perfect such lien, shall comply with the provisions of section 2476, which are as above quoted, so far as they are material to this controversy, and, in addition, give notice, in writing, to the owner of the property or his agent of the amount and character of his claim. It is further provided by section 2478 that "no inaccuracy in the account filed, or in the description of the property to be covered by the lien, shall invalidate the lien, if the property can be reasonably identified by the description given, and the account conform substantially to the requirements of the two preceding sections, and is not wilfully false."

1. As to the description given of the property. The object of requiring a description is to inform the owner upon which of his property the lien is claimed, and to give notice thereof to purchasers and creditors, so that they may identify the property, and protect themselves against the lien. "If the property can be reasonably identified by the description given," it is all that the law requires. It is here described as "that certain three-story building, No. —, situate and being in the city of Richmond, Va., on Grace street, between Shafer and Harrison streets, and the lot or piece of ground and curtilage appurtenant to the said building, fronting on said south line of Grace street 49 feet, and running back 156 feet, more or less, of which Wirt E. Tay-

lor is the owner or reputed owner." The description ought to be and is sufficient to enable any one to identify the premises intended to be covered by the lien. It is full and accurate, and leaves no doubt as to the property meant. It has been held that a claim filed against "a three-storied brick house, situate on the south side of Walnut street, between Eleventh and Twelfth streets, in the city of Philadelphia, of which Harker and Thorn were the owners, or reputed owners" (*Harker v. Conrad*, 12 Serg. & R. 301); and against a building "situate on the west side of Thirteenth street, between Vine and James streets, in the county of Philadelphia, belonging to or said to belong to Charles Springer," when in point of fact it was between Callowhill and James, Callowhill street intervening between Vine and James streets (*Springer v. Keyser*, 6 Whart. 187); and against "the wharf situated on Battery street, between Pacific and Jackson streets, in San Francisco" (*Hotaling v. Cronise*, 2 Cal. 60), gave a sufficiently accurate description.

2. As to the sufficiency of the account. It is contended that the account filed as the basis of the lien does not conform to the requirements of the law. The account is as follows:

1891.

May 22.—To stonework done on Mr. Wirt E. Taylor's residence on Grace street, between Shafer and Harrison streets, in the city of Richmond, and materials furnished, as per agree- ment with John F. Bell, general contractor for said work...		\$2,350 00
Extras: 26 ft. 7 in. curbing, at 90 cts.....		23 92
21½ ft. tile at \$1.00.....		21 50
		\$2,395 42
Credit by cash.....		1,175 00
Balance due.....		\$1,220 42

It is insisted that the account should have set forth particularly and separately the quantity of the various materials furnished and used in the execution of the stone-work, the number of days of labor required to perform the work, and the respective prices of the materials and labor; in short, that it was necessary, in order to perfect the lien, that there should have been an itemized statement of the materials and labor entering into this charge in the account. The evidence shows that the stone-work was contracted for as an entirety, and for a certain fixed sum. In such case it was not necessary, if possible, to furnish an itemized statement of the materials or labor. The account filed states what the work was, and the contract price. It could not set

forth the specific quantity of the different materials, and the prices therefor, or the amount and price of the labor, as is insisted on, when there had been no agreement as to the materials or labor separately, either as to quantity or price. It sets forth the only contract that was made, and in doing so "conforms substantially" to the requirements of the law. The reason for the strictness required in having the account show the amount and character of the work done or materials furnished, and the prices charged therefor, and the payments made, if any, is to prevent fraud and collusion, and to enable the owner to ascertain and verify the correctness of the demand, and to give definite information to purchasers and incumbrancers. Where the work is contracted for as an entirety for a specific amount, and this is so set out in the account filed, all the information is given that is needed or can be reasonably required. It is therefore our conclusion that the account filed in this case is sufficient. And this has been the course of decision of the courts of last resort of a number of the States having mechanics' lien laws similar to our own. *Gunther v. Bennett*, 72 Md. 384; *Young v. Lyman*, 9 Pa. St. 449; *Pool v. Wedemeyer*, 56 Tex. 287; *Heston v. Martin*, 11 Cal. 41; *France v. Woolston*, 4 Houst. 561; *Bank v. Curtis*, 18 Conn. 342; *King v. Smith*, 42 Minn. 286; *Leeds v. Little*, 42 Minn. 414 and *School District v. Howell*, 44 Kan. 285. The statute of Maryland requires that every such claim shall set forth, among other things, "the amount or sum claimed to be due, and the nature or kind of work, or the kind and amount of materials furnished, and the time when the materials were furnished or the work done." In *Gunther v. Bennett*, *supra*, the Court said: "The only objection taken to it [the bill of particulars] is that it does not set forth the amount of materials furnished. This court has frequently held that this requirement must be complied with. But where there is a contract, as here, both to do the work and furnish the materials for a certain sum, it is not required to do more than set out the contract price, and for the obvious reason that, under the contract itself, no amount has been fixed either for the work or materials separately." Counsel for the appellants rely upon the case of *Shackleford v. Beck*, 80 Va. 573, as authority for the contention that an itemized account is required by the statute to be filed in every case. An examination of that case shows that it was unlike this in important features, and that it did not proceed to the extent claimed. There, while the original contract was, it is true, for a sum in gross, there were also charges for extra work. Payments had been made, and the balance due on the account struck.

The account filed in that case was merely for this balance. All the items of work, the prices thereof, and the payments made, were omitted from the account, and there was nothing to show how the balance claimed to be due was arrived at. It really gave no information by which its correctness could be verified, but in this case the account filed sets forth what the contract for the stone-work was, and the price agreed to be paid, together with each item of extra work, and the price thereof, and, after applying the payments made to the general aggregate, ascertains the balance due. The accounts filed in that case and in this are in striking contrast in essential elements. There is nothing in the opinion of the court in *Shackleford v. Beck*, *supra*, from which it can be concluded that, under the law as it then was, and under which that case was decided, an account containing the simple statement of the work done or materials furnished under a contract for a sum in gross would not be held sufficient. Said the court in that case: "But if it be true, as insisted, that where a contract is made in gross for the erection of a building, and supplying the material entering into its construction, the law is complied with by filing a statement of the amount due and owing for the work, it is not applicable in this case, because a considerable portion of the work was done, and material furnished, under a verbal contract or contracts, outside of and not included in the written contract with Beck; all of which are embraced in the itemized account rendered by appellant to Beck, but which account was not filed by appellant in the clerk's office to be recorded as the law requires." 80 Va. 577. This decision was rendered June 25, 1885, when the statute (Code 1873, ch. 115, sec. 4) required that the contractor should file "a true account of the work done or materials furnished." Since then the law has been much modified. The word "true" has been omitted from the requirement of the statute, and a new section incorporated (Code 1887, section 2478), which provides that "no inaccuracy in the account filed . . . shall invalidate the lien if . . . the account conform substantially to the requirements" of the statute, "and is not wilfully false."

3. As to the verification of the account. The statute requires that the account shall be verified by the oath of the claimant or his agent. It prescribes no particular form of verification. At the foot of the account filed in this case is appended the certificate of the notary that James Netherwood personally appeared before him and "made oath to the correctness of the account." This is a sufficient verification under the statute. The case of *McDonald v. Rosengarten*, 134 Ill.

126, relied on by counsel for appellants to show that the affidavit here was defective, differs materially from this. The affidavit to the account there was merely that the claimant "had performed the labor and furnished the materials set orth in the statement of claim for a lien." Under the statute of Illinois no lien can be had unless the work shall be done or materials be furnished within a given time from the commencement of the work, or the delivery of the material. "Time," said the court in the case cited above, "is therefore an indispensable element to be considered in the enforcement of any lien under the statute, and no lien can be enforced disregarding the terms of the statute." The affidavit was, therefore, held to be fatally defective, because of the omission of the element of time, as required by the statute.

4. As to the notice to the owner. It is proved that on the day the lien was perfected an exact copy of the account as filed in the Clerk's office of the Chancery Court, and of the statement for the lien attached to the account, was served on Taylor, the owner. We have already shown that the account filed was a sufficient compliance with the statute, and it therefore follows, as a matter of course, that the notice given to the owner, as above stated, was sufficient. It was insisted that the plaintiff was not entitled to enforce the lien for his full claim because of the delay in executing his work. When Bell secured the contract for building the house for Taylor he solicited Netherwood to contract for the stone-work. The plan and specifications required that the stone to be used in the construction of the building should be obtained from the Alderson Brownstone Company. Netherwood had formerly met with much delay in getting stone from this company, and he hesitated to make an estimate for the work. He was induced to do so by the following letter:

"*Mr. James Netherwood:*

"I have the contract on Taylor's house. Please make out a list of the stone at once, and hand it to Mr. Wilson or Mr. James D. Crump. Mr. West will bind them to furnish you the stone in a certain time, and you to write me a proposition to do the stone-work as per plan and specifications for so much, and agree not to delay the work any time after the stone is delivered to you. I leave the plans in your office. Please return them to me to-night. Yours, truly,

"JOHN F. BELL, 1009 W. Main street.

"April 8th, 1890."

Messrs. Wilson and Crump were officers of the Alderson Brownstone

Company, and Mr. West was the architect of the house to be built for Mr. Taylor, and furnished the plans and specifications. No time was specified within which Netherwood should complete his work. He only agreed not to delay it any time after the stone was delivered to him. It is apparent from the evidence that there was great delay in completing the house so as to be occupied by Taylor, and considerable delay in doing the stone-work. We are satisfied, however, from the evidence, that the delay was not the fault of Netherwood, but caused by the delay in delivering to him the stone. He ordered it promptly from the company after receiving from Bell the contract for the work, and did not delay the work after the stone was delivered to him. There was not sufficient ground to abate the amount for which the lien was claimed, and the Chancery Court rightly so held.

It is also assigned as error that, while the bill was filed to enforce the lien against the house and lot of Taylor, the Court entered a personal decree against Wirt E. Taylor and John F. Bell for the amount of the lien. The Court, by its decree, established the lien for the amount for which it was perfected under the statute, and entered the decree against Taylor and Bell, as stated. While it would have been more regular and proper to have decreed that the property be subjected, by renting or selling, to the payment of the lien, yet, inasmuch as all the parties were properly before the court, and the court ascertained that Bell, the general contractor, owed James Netherwood the amount claimed under the lien, and that Taylor owed Bell more than enough to satisfy the lien, neither of them is injured by the form of the decree, nor has any good cause for complaint. Taylor, in his answer, admits that he holds in his hand the amount of money claimed, to be paid to Bell or otherwise, as the court may direct. It would be a vain and useless act to subject the property to the payment of the lien when the owners already had the money in hand to pay it, and only waited for the court to decide to whom he should pay it. There was no occasion, therefore, for the court to direct that Taylor's property on which the lien was perfected should be rented or sold, but only to decree to whom the money should be paid.

We are therefore of the opinion, that the decrees of the Chancery Court, from which the appeal was taken, must be affirmed.

Affirmed.

COMMENTS BY THE EDITOR.—The opinion of the Court is a very clear and satisfactory construction of the Code provisions in regard to mechanics' liens. But the *personal* decree (affirmed) of the Chancery Court against the owner of

the land and the general contractor for the amount established as due the complainant (Netherwood), the subcontractor, was certainly very irregular and possibly erroneous.

If there was error, however, it was, for the reasons stated by the Court of Appeals, not prejudicial to the owner and general contractor (the appellants), and they had no just cause of complaint, and the appellee (Netherwood) was satisfied with it.

Suppose, however, Netherwood had been appellant and the decree appealed from was final. In such case, it is not perceived how the personal decree of the Chancery Court could have been sustained. The complainant filed his bill to enforce his perfected lien on the land of the owner. That was its sole object and the prayer was for that specific relief, though there was the usual prayer for general relief. He was entitled, on the facts proved, to a decree to enforce that lien by sale of the subject or so much thereof as might be necessary; and if the proceeds turned out to be insufficient to satisfy the lien, he was entitled, according to the Virginia practice, to a *personal* decree for the *deficiency*, upon the established principle that "when once a court of equity has obtained legitimate possession of a cause for any purpose of relief, it will not afterwards turn the parties round to a court of law, nor stop at administering merely partial relief, but will itself proceed to do complete justice between them." William Green's Appendix, No. 2, to Minor's Ed'n of Wythe's Reports, 422, 423.

The proper decree of the Chancery Court would have been, first, to enforce the lien by sale of the land bound by it, or so much as might be necessary, unless (*nisi*) the defendants should, within a reasonable time prescribed by the decree, pay to the complainant the established amount of his lien and his costs incurred in the suit; and if the defendants should fail to pay the amount and costs within the prescribed time and upon the sale the proceeds were not sufficient for that purpose, *then* there should have been a further decree, *personal*, against the defendants for the deficiency.

If the decree was final, it was clearly to the prejudice of the complainant; for, by acquiescence, he *might* have lost his debt. He had two remedies; one by bill of review to correct the decree for error of law apparent on the face of it, and the other by appeal to the Court of Appeals. He resorted to neither. And now, since the decree has been affirmed by the Court of Appeals, the mechanics' lien, if the decree was final, is extinguished; and, if the execution against the defendants proves unavailing, the only security the complainant has for his debt is the lien of the *Chancellor's decree* on the real estate of the defendants binding from the time it is duly docketed, as against subsequent *bona fide* purchasers for value without notice, and, from its date, as against other decrees and judgments for money, and thus the lien of the decree might be fruitless.

On the first reading of the record, it seemed to the writer, that the decree of the Chancery Court was final; but on a more careful examination, while he has doubts, he is rather inclined to think the decree is merely interlocutory. For, though the decree is personal against the defendants—the owner and general contractor—for the amount of the complainant's debt, it is provided in the decree that the amount ascertained to be owing by the owner to the general contractor, "when paid, shall be in full satisfaction of the mechanics' lien," &c. This would

seem to imply that the lien is reserved *until payment*, and that, unless payment be made, the reserved lien may be enforced by further proceedings in the same cause.

Taking this view, the Chancellor's decree would be merely interlocutory, according to the rule laid down by Judge Baldwin in *Cocke v. Gilpin*, 1 Rob. R. 20, so often approved in subsequent cases, that "where further action *in the cause* is necessary to give *completely* the relief *contemplated by the court*, there the decree upon which the question arises is to be regarded, not as final, but interlocutory."

If the decree is to be regarded as interlocutory merely, with a reservation of the lien and the right to enforce it in case the decree be not paid, it was not to the prejudice of Netherwood, and he could not have justly complained of it; and the defendants could not complain of it, under the facts and circumstances, as was very properly held by the Court of Appeals.

The comments on this case are not made in the spirit of fault-finding, but by way of cautionary suggestions in the preparation of decrees.